

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 ARMANDO RAMIREZ,

12 Petitioner,

13 v.

14 L.S. MCEWEN,

15 Respondent.
16

) Case No. CV 11-7210 JST(JC)

) ~~(PROPOSED)~~ ORDER SUMMARILY
) DISMISSING PETITION FOR WRIT
) OF HABEAS CORPUS
)
17

18 **I. SUMMARY**

19 On August 31, 2011, Armando Ramirez (“petitioner”), a state prisoner
20 proceeding *pro se*, filed a Petition for Writ of Habeas Corpus by a Person in State
21 Custody (“Petition”) pursuant to 28 U.S.C. § 2254 and exhibits (“Petition
22 Exhibits” or “Petition Ex.”). Petitioner challenges the California courts’ decisions
23 upholding a 2009 decision of the California Board of Parole Hearings (“the
24 Board”), to deny him parole. He essentially claims the California courts
25 unreasonably determined that there was some evidence he was unsuitable for
26 parole and posed a current risk of danger to the public if released and erroneously
27 upheld the Board’s denial of parole for five years.
28

///

1 It plainly appears from the Petition and the Petition Exhibits, that petitioner
 2 is not entitled to relief at this time because his claims are not cognizable on federal
 3 habeas review. Accordingly, the Petition is dismissed pursuant to Rule 4 of the
 4 Rules Governing Section 2254 Cases in the United States District Courts.¹

5 **II. DISCUSSION**

6 “There is no constitutional or inherent right of a convicted person to be
 7 conditionally released before the expiration of a valid sentence.” Greenholtz v.
 8 Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 7 (1979). In
 9 some instances, however, state statutes may create a liberty interest in parole
 10 entitled to protection under the federal Due Process Clause. Id. at 12.

11 Because California’s statutory parole scheme guarantees that prisoners will
 12 not be denied parole absent some evidence of present dangerousness, the Ninth
 13 Circuit Court of Appeals held that California law creates a liberty interest in parole
 14 that may be enforced under the Due Process Clause. Hayward v. Marshall, 602
 15 F.3d 546, 561-563 (9th Cir. 2010) (en banc). The Ninth Circuit instructed
 16 reviewing federal district courts to determine whether California’s application of
 17 California’s “some evidence” rule was unreasonable or was based on an
 18 unreasonable determination of the facts in light of the evidence. Hayward, 603
 19 F.3d at 563.

20 On January 24, 2011, the Supreme Court issued a per curiam opinion in
 21 Swarthout v. Cooke, – U.S. –, 131 S. Ct. 859 (2011). In Swarthout, the Supreme
 22 Court held that “the responsibility for assuring that the constitutionally adequate
 23 procedures governing California’s parole system are properly applied rests with
 24 California courts, and is no part of the Ninth Circuit’s business.” Swarthout, 131

26 ¹Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts
 27 requires a judge promptly to examine a federal habeas petition, and to dismiss it if “it plainly
 28 appears from the petition and any attached exhibits that the petitioner is not entitled to relief in
 the district court. . . .”

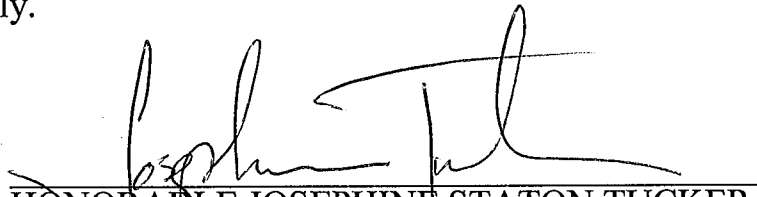
1 S. Ct. at 863. The federal habeas court's inquiry into whether a prisoner denied
 2 parole received due process is limited to determining whether the prisoner "was
 3 allowed an opportunity to be heard and was provided a statement of the reasons
 4 why parole was denied." *Id.* at 862 (citing *Greenholtz*, 442 U.S. at 16).

5 In this case, petitioner does not allege that he was denied due process by
 6 virtue of being deprived of an opportunity to be heard or of the provision of a
 7 statement of reasons why parole was denied. Indeed, the record in the instant case
 8 reflects that petitioner was present and represented by counsel at his parole
 9 hearing, was given an opportunity to be heard, and was provided a statement of the
 10 reasons for the parole board's decision. (Petition Ex. F). "The Constitution does
 11 not require more [process]." *Greenholtz*, 442 U.S. at 16. Therefore, the instant
 12 Petition does not present cognizable claims for relief and is summarily denied.

13 **III. ORDER**

14 IT IS THEREFORE ORDERED that the Petition is dismissed and that
 15 Judgment be entered accordingly.

16 DATED: 10-03-11

17
 18 
 19 HONORABLE JOSEPHINE STATON TUCKER
 UNITED STATES DISTRICT JUDGE

20 Presented by:²

21 /s/
 22 Honorable Jacqueline Chooljian
 23 UNITED STATES MAGISTRATE JUDGE
 24

25 _____
 26 ²Pursuant to Local Rule 72-3.2, the Magistrate Judge promptly shall examine a petition
 27 for writ of habeas corpus, and if it plainly appears from the face of the petition and any exhibits
 28 annexed to it that the petitioner is not entitled to relief, the Magistrate Judge may prepare a
 proposed order for summary dismissal and submit it and a proposed judgment to the District
 Judge.